

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

JACK GREEN,

Plaintiff,

v.

CIVIL ACTION NO. 5:07-cv-00363

JAMES RUBENSTEIN, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

Plaintiff, a former inmate at the Mount Olive Correctional Complex (“MOCC”), initiated this action against various Defendants for the alleged withholding of dental services for extended periods of time, which he contends violated his rights under the Eighth and Fourteenth Amendments of the United States Constitution.¹ As a result of previous rulings, only two Defendants remain in the instant action: Correctional Medical Services, Inc. and Mary Westfall.² Pending before the Court are Defendants’ Motion for Summary Judgment of Correctional Medical Services, Inc. and Mary

¹ In his June 6, 2007 Complaint, Plaintiff, proceeding *pro se*, alleged that while he was an inmate at MOCC, in Mt. Olive, West Virginia he was provided improper and inadequate medical care by the following defendants: James Rubenstien, Commissioner of the Division of Corrections; Thomas McBride, former Warden of Mount Olive Correctional Complex; Correctional Medical Service, Inc. (C.M.S.); Mary Westfall, Health Services Administrator for C.M.S.; and Dr. DeVere D.D.S., treating dentist. On March 24, 2009, Plaintiff was transferred to Huttonsville Correctional Center in Huttonsville, West Virginia. (See Document No. 77.)

² See *Green v. Rubenstein*, 644 F.Supp.2d 723 (S.D. W. Va. 2009)(On March 18, 2009, upon various findings on the then pending dispositive motions, the District Court adopted the Magistrate’s Proposed Findings and Recommendation and made the following rulings: (1) granted Defendants Westfall, DeVere and C.M.S.’s Motion to Dismiss Plaintiff’s claim of medical negligence; (2) denied Defendant C.M.S.’s Motion to Dismiss Deliberate Indifference Claims; (3) treated Dr. DeVere’s Motion to Dismiss Deliberate Indifference Claims as a Motion for Summary Judgment and granted it; and (4) granted Commissioner Rubenstein and Warden McBride’s Motion for Summary Judgment.)

Westfall (Document No. 80) and Plaintiff's Motion to Dismiss Correctional Medical Services, Inc. and Mary Westfall Motion for Summary Judgment (Document No. 91).


By Order (Document No. 79) entered on April 1, 2009, this action was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). On February 2, 2010, the Magistrate Judge submitted *Proposed Findings and Recommendation* ("PF&R") (Document No. 93) wherein it is recommended that this Court grant Correctional Medical Services, Inc., and Mary Westfall's Motion for Summary Judgment (Document No. 80), deny Plaintiff's Motion to Dismiss Correctional Medical Services, Inc., and Mary Westfall's Motion for Summary Judgment (Document No. 91), dismiss Plaintiff's Complaint (Document No. 3) and remove this matter from the Court's docket.

The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and the Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). In addition, this Court need not conduct a *de novo* review when a party "makes general and conclusory objections that do not direct the Court to a specific error in the magistrate's proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). Objections to the PF&R in this case were due on February 19, 2010. To date, no party has filed any objections to the Magistrate Judge's *Proposed Findings and Recommendation*.

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*, and **ORDERS** that the Motion for Summary Judgment of Correctional Medical Services, Inc. and Mary Westfall (Document No. 80) be **GRANTED** and that Plaintiff's Motion to Dismiss Correctional Medical Services, Inc. and Mary Westfall Motion for Summary Judgment (Document No. 91) be **DENIED**. The Court further **ORDERS** that Plaintiff's Complaint be **DISMISSED WITH PREJUDICE**.

The Court **DIRECTS** the Clerk to send a certified copy of this *Memorandum Opinion and Order* to Magistrate Judge VanDervort, counsel of record, and any unrepresented party.

ENTER: August 16, 2010



IRENE C. BERGER, JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA